IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.495 OF 2004

Shalini Shrikrishna Marathe
and another Plaintiffs

versus

Vishwas Gajanan Tendulkar Defendant

Mr.Tejas Bhatt for plaintiffs

None for defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 21st June 2005

PC :

1. This suit is placed for ex-parte hearing before me on the request of Mr.Bhatt appearing for plaintiffs. Mr.Bhatt submits that a Summons for Judgement was taken out in this suit (218 of 2004). After the defendants filed appearance through their advocate Mr.Malvankar, that summons for judgement was heard by this Court on 7th March 2005 along with Summons for Judgement No.215 of 2004. For reasons recorded in the order passed in Summons for Judgement No.215 of 2004, conditional leave to defend the suit was granted by this Court in this summary suit as

well. The deposit to be made was of Rs.50,000/- and the period stipulated for the same was four weeks. The order very clearly states that on failure of the defendant to deposit the said amount, the plaintiffs would be at liberty to apply.

2. Mr.Bhatt states that against the orders on the summons for judgements as above, the defendants neither filed an appeal nor sought extension of time to deposit the amount. Thus, the order passed has not been complied with. The condition on which the leave was granted to defend being not complied with, the plaintiffs had liberty to move the Prothonotary and Senior Master of this Court and the Prothonotary has forwarded necessary non deposit certificate. Non deposit certificate is taken on record and marked "X" for identification. None appears for the defendant to show cause despite the matter being placed under this caption and the name of the defendant appearing on the board. Once the order passed on the summons for judgement grants conditional leave to deposit and the condition is not complied with nor application is made seeking time to comply with the same, then the necessary consequence that the plaintiff is entitled to a

judgement in his favour would follow. The plaintiffs in this suit are entitled to this relief. The Court has already gone into the merits of the matter and after holding that the suit is maintainable as summary suit and the claim is not barred by limitation, imposed the aforesaid conditions. Now that the conditions are not complied with, there shall be a decree as prayed. Original documents along with list marked "X-1" for identification. Refund of court fee and computation of advocate’s costs as per rules.

(S.C.DHARMADHIKARI, J.)